

§518.76

§518.76 Jurisdiction.

The requester may bring suit in the United States District Court in the district in which the requester resides or is the requester's place of business, in the district in which the record is located, or in the District of Columbia.

§518.77 Burden of proof.

The burden of proof is on the DoD Component to justify its refusal to provide a record. The court shall evaluate the case *de novo* (anew) and may elect to examine any requested record *in camera* (in private) to determine whether the denial was justified.

§518.78 Action by the court.

(a) When a DoD Component has failed to make a determination within the statutory time limits but can demonstrate due diligence in exceptional circumstances, the court may retain jurisdiction and allow the Component additional time to complete its review of the records.

(b) If the court determines that the requester's complaint is substantially correct, it may require the United States to pay reasonable attorney fees and other litigation costs.

(c) When the court orders the release of denied records, it may also issue a written finding that the circumstances surrounding the withholding raise questions whether DoD Component personnel acted arbitrarily and capriciously. In these cases, the special counsel of the Merit Systems Protection Board shall conduct an investigation to determine whether or not disciplinary action is warranted. The DoD Component is obligated to take the action recommended by the special counsel.

(d) The court may punish the responsible official for contempt when a DoD Component fails to comply with the court order to produce records that it determines have been withheld improperly.

§518.79 Non-United States Government source information.

A requester may bring suit in a U.S. District Court to compel the release of records obtained from a nongovernment source or records based on information obtained from a nongovern-

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ment source. Such source shall be notified promptly of the court action. When the source advises that it is seeking court action to prevent release, the DoD Component shall defer answering or otherwise pleading to the complainant as long as permitted by the Court or until a decision is rendered in the court action of the source, whichever is sooner.

§518.80 Litigation status sheet.

FOIA managers at DoD Component level shall be aware of litigation under the FOIA. Such information will provide management insights into the use of the nine exemptions by Component personnel. The Litigation Status Sheet at appendix C provides a standard format for recording information concerning FOIA litigation and forwarding that information to the Office of the Secretary of Defense. Whenever a complaint under the FOIA is filed in a U.S. District Court, the DoD Component named in the complaint shall forward a Litigation Status Sheet, with items 1 through 6 completed, and a copy of the complaint to the OASD(PA), Attn: DFOISR, with an information copy to the General Counsel, Department of Defense, Attn: Office of Legal Counsel. A revised Litigation Status Sheet shall be provided at each stage of the litigation. In the Department of the Army, HQDA TJAG (DAJA-LT), WASH DC 20310-2210 is responsible for preparing this report.

Subpart F—Fee Schedule

GENERAL PROVISIONS

§518.81 Authorities.

The Freedom of Information Act (5 U.S.C. 552), as amended; by the Freedom of Information Reform Act of 1986; the Paperwork Reduction Act (44 U.S.C. 35); the Privacy Act of 1974 (5 U.S.C. 552a); the Budget and Accounting Act of 1921 (31 U.S.C. 1 *et seq.*); the Budget and Accounting Procedures Act (31 U.S.C. 67 *et seq.*); the Defense Authorization Act for FY 87, Section 954, (Pub. L. 99-661); as amended by the Defense Technical Corrections Act of 1987 (Pub. L. 100-26).